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HILDA VASQUEZ, individually and as personal representative of the ESTATE OF EDGAR
GARCIA, THE ESTATE OF EDGAR GARCIA

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HILDA VASQUEZ, individually and as personal representative of the ESTATE OF EDGAR GARCIA, THE ESTATE OF EDGAR GARCIA

CASE NO. CV 13-07726- CBM (AJWx)

Judge: Consuelo B. Marshall

Plaintiffs,

**PLAINTIFFS' MEMORANDUM OF
CONTENTIONS OF FACT AND LAW
PER LOCAL RULE 16-4**

V.

Pretrial Conference: January 13, 2015
Trial: February 17, 2015

CITY OF SANTA PAULA; THE SANTA PAULA POLICE DEPARTMENT; Interim Chief, ISMAEL CORDERO; OFFICER HECTOR RAMIREZ, individually and in his official capacity as a Police Officer for the CITY OF SANTA PAULA; OFFICER CHAD PEPLINSKI, individually and in his official capacity as a Police Officer for the CITY OF SANTA PAULA; AND DOES 1 through 50, inclusive, individually and in their official capacities as POLICE OFFICERS for the CITY OF SANTA PAULA.

Defendants

Pursuant to Local Rule 16-4, Plaintiffs hereby submit their Memorandum of Contentions of Fact and Law.

1 I. **PLAINTIFFS' CONTENTIONS OF FACT:**

2 A. The incident giving rise to this claim occurred on July 28, 2012 at
3 approximately 7:46 p.m. Santa Paula Police officers responded to a
4 residential disturbance call at 1117 New Street in the CITY OF
5 SANTA PAULA, County of Ventura, State of California. During her
6 radio call, the dispatcher immediately indicated to responding officers
7 that "EDGAR GARCIA" was the party sought. Upon their arrival,
8 two officers allegedly were fired upon by some unknown suspect and
9 as a result, Officer Chad Peplinski was shot in the buckle of his belt
10 and an "Officer Down" call came out on the radio thereby summoning
11 more police response.

12 B. Immediately after the gunfire and chaos, EDGAR GARCIA was
13 observed running to the rear of the residence where he was met by
14 Officer Hector RAMIREZ, who had been lying in wait on the northern
15 most side of the cinder block retaining wall separating 1117 New
16 Street from the property directly behind the residence to the North.
17 Officer RAMIREZ claims that EDGAR GARCIA attempted to jump
18 onto the north retaining wall where he was waiting and upon seeing
19 him (Officer RAMIREZ), Mr. GARCIA jumped down and back into
20 the backyard. Officer RAMIREZ claims that he, too, jumped down on
21 the opposite side of the retaining wall to draw his weapon. After
22 obtaining his weapon, Officer RAMIREZ, who is approximately 5'9"
23 tall, claimed that he stood upon several tires to peer over the six foot
24 (6') cinder block wall and upon visually locating Mr. GARCIA,
25 immediately ordered him to get down on the ground (disputed). It is
26 this crucial time that there are conflicting reports as to what actually
27 happened next.

C. In an audio recording of the incident recorded by Officer Scott Varner as it happened, Officer RAMIREZ, when asked what happened by Senior Officer Scott Varner, claimed that EDGAR GARCIA stated “he pointed a gun at me, I Shot back.” At his deposition, Officer RAMIREZ claimed that EDGAR GARCIA was turned in his direction and while back peddling, pointed his weapon at him while making “jerking movements.” Plaintiffs are of the belief that RAMIREZ made this claim in an attempt to make it appear that EDGAR was attempting to shoot his weapon at him. It needs to be established at this time that at her deposition, Ventura County Sheriff’s Department Forensic Scientist, Janey Dunn, testified that Mr. GARCIA’s weapon was operational and had a round in the chamber at the time it was recovered on the ground by law enforcement after EDGAR GARCIA was shot, thereby disproving Officer RAMIREZ’s allegation that Mr. GARCIA was attempting to shoot him. Also, while listening to Scott Varner’s recording, Officer RAMIREZ while testifying at his deposition was asked if he could hear himself telling Mr. GARCIA to “get down.” He admitted that he could not.

D. Officer RAMIREZ admits that he shot six (6) rounds at Mr. GARCIA while at a time when Mr. GARCIA was only 10' away from him and as he was “back peddling” eastbound while allegedly pointing his weapon at the officer. Because Officer RAMIREZ missed him six (6) times at point-blank range, Mr. GARCIA, fearing for his life, turned toward the east and ran toward the Eastern Cinder Block retaining wall of the residence in an attempt to escape Officer RAMIREZ’ attempts to shoot and kill him. While running away from the officer and while his back was towards Officer RAMIREZ, Officer RAMIREZ elected to kill Mr. GARCIA by firing an additional 7th and 8th round at Mr.

1 GARCIA who at this time, as admitted by Officer RAMIREZ, was
2 approximately forty (40') feet away from him. At his deposition
3 Officer RAMIREZ admitted not seeing any weapon in Mr. GARCIA's
4 hands during the time he was firing his 7th and 8th shots as well.
5 Officer RAMIREZ admits that there was no one else in the backyard
6 with he and EDGAR GARCIA at this time as too, but claimed that he
7 shot Mr. GARCIA because he feared for his safety, the safety EDGAR
8 GARCIA'S family, of his fellow police officers, the public and the
9 safety of the dispatchers who were several blocks away at police
10 headquarters. It was at this point that the evidence shows that Officer
11 RAMIREZ Shot his 40 Caliber Handgun at Mr. GARCIA striking him
12 in the back once whereby the bullet exited through his chest just right
13 of his left nipple and reentered his left forearm and exiting it as well.
14 As a result, Officer RAMIREZ reports that Mr. GARCIA turned his
15 body towards him and screamed a very loud primal yell at him,
16 dropped to his knees (one at a time), and fell down on his face.

17 E. Officers Huerta, Shilo and RAMIREZ assisted each other in
18 handcuffing Mr. GARCIA in the Prone position and allowed him to lie
19 there for approximately 18.5 to 19 minutes before any medical
20 personnel were allowed to attempt to treat him. No officers,
21 admittedly, ever provided Mr. GARCIA any direct pressure or any
22 other emergency medical services. Several witnesses of this incident
23 have testified at deposition; emergency personnel, police officers and
24 citizens who witnessed the shooting. Each of those witnesses,
25 including the medical examiner who performed the autopsy of Mr.
26 GARCIA, Dr. Ronald O'Halloran, testified that the amount of time
27 Mr. GARCIA lay on his stomach bleeding from the back/chest wound
28 was anywhere from 18.5 to 19 minutes.

1 F. Officer Huerta, who too was recording the entire incident, was ordered
2 to secure the backyard and Mr. GARCIA while the residence was
3 being “cleared.” Officer Huerta, too, recorded the entire event. In
4 Officer Huerta’s recording of the incident, you can hear the labored
5 agonal breathing of EDGAR GARCIA and essentially him taking his
6 last breaths while Officer Huerta, who was not in the backyard during
7 the exchange with Officer RAMIREZ and who had not yet had an
8 opportunity to discuss the matter with Officer RAMIREZ, began
9 yelling at Mr. GARCIA “why did you point your gun at the officer” in
10 an attempt to admittedly elicit a dying declaration from the gravely
11 injured EDGAR GARCIA. At his deposition, Officer Huerta admits
12 that he had no basis for asking that question from the dying EDGAR
13 GARCIA but that he was trained to do that.

14 G. Other than giving his death cry, EDGAR GARCIA never said
15 anything after he was shot by Officer RAMIREZ, but there is no doubt
16 that he experienced great pain and suffering as a result of receiving a
17 through and through shot to the back and left forearm. When asked
18 why he shot at the fleeing EDGAR GARCIA, Officer RAMIREZ
19 claimed that he was allowed to do so to protect other officers and the
20 public, however, at his deposition RAMIREZ testified that there was
21 no other officers or persons in the backyard of the residence other than
22 himself and EDGAR GARCIA.

23 H. The SANTA PAULA POLICE DEPARTMENT's General Order No.
24 8-1 VI requires that a suspect injured at a scene be provided medical
25 attention immediately, once it is safe to do so. The SANTA PAULA
26 POLICE DEPARTMENT claims that the reason they failed to provide
27 immediate medical attention to EDGAR GARCIA was because they
28 had to clear the residence first before they would allow Medical

1 Personnel to come upon the property. This condition precedent was
2 caused mostly because of an intentionally false report made by
3 Reserve Officer Shilo immediately after the shooting. Officer Shilo
4 claimed that he observed four outstanding suspects jumping over the
5 same northern cinder block retaining wall that Officer RAMIREZ was
6 posted on. The problem here is that Officer RAMIREZ testified and
7 denied ever seeing any such suspects at his deposition. However, on
8 officer Varner's recording of the entire event, including Reserve
9 Officer Shilo's claim, Officer's Varner, Shilo, Peplinski and
10 RAMIREZ were all present and in close proximity to one another and
11 at no time did Officer RAMIREZ deny Reserve Officer Shilo's claim
12 in order to prevent the expenditure of the minimal police resources at
13 the scene to locate these "outstanding suspects" and to secure the
14 scene.

15 I. While Mr. GARCIA lay handcuffed behind his back, profusely
16 bleeding from his chest arms and mouth, and placed in the prone
17 position with his mouth and nose pointing perpendicular to the ground,
18 Officer Scott Varner stood outside the residence and asserted that they
19 (the police) needed to "clear the residence" on three (3) separate
20 occasions over a four (4) to five (5) minute period of time. During the
21 search of the residence, it can be heard and Officer Varner testified to
22 and confirmed, that he could hear and identify on his audio recording
23 Officer RAMIREZ, whom he had ordered to stay with Officer
24 Peplinski, transmitting over the police radio to medical personnel to
25 "stand by." This is the same man who less than six (6) minutes prior,
26 shot EDGAR GARCIA. It took Officer Varner and two other law
27 enforcement officers approximately 13 to 14 minutes to clear the
28 approximately 1400 sq foot home. Officer Varner admits that he did

1 not have enough police personnel at the scene when he began his
2 search. It should be noted that after Mr. GARCIA was shot and
3 handcuffed, Officer Varner on his police radio told Sheriff's personnel
4 who were responding to the scene to "downgrade" which means to
5 turn off their lights and sirens and take their time. During his search,
6 Officer Varner testified that he could hear over his radio Sgt. Cody
7 Madison, who now was the senior person at the scene, clear medical to
8 the residence some 14 minutes after Mr. GARCIA was shot without
9 clearing it through him. He later admitted that he still felt the scene
10 was unsafe but did not discuss this with Sgt. Madison.

11 J. Despite Sgt. Madison's clearing medical personnel to go to the rear of
12 the residence, medical still did not reach Mr. GARCIA for another 4 to
13 5 minutes.

14 K. Plaintiffs are of the belief and thereon allege that had Reserve Officer
15 Shilo not put this false report out at the scene, emergency medical
16 responders, who were staged outside the perimeter of the scene, would
17 have been allowed to enter the residence and possibly save the life of
18 EDGAR GARCIA or at the very least provide him with pain
19 medication and medical treatment that would have made him
20 comfortable before he expired, instead of causing him to have to
21 endure the pain and suffering he did based on a false allegation of
22 Officer Shilo.

23 L. EDGAR GARCIA died like a dog by the hands of the SANTA
24 PAULA POLICE DEPARTMENT. At the end of Officer Scott
25 Varner's recording of the shooting, some of the officers discuss this
26 false report and determine that it was in fact, falsely made by Reserve
27 Officer Shilo.

1 M. At is deposition, Ventura County Medical Examiner Dr. Ronald
2 O'Halloran, M.D. testified that had Mr. GARCIA received proper
3 immediate medical treatment and got to a trauma center quickly, Mr.
4 GARCIA may have survived the shooting.

5 **II. PLAINTIFFS' CONTENTION OF LAW:**

6 A. *Tennessee v. Garner*, 471 U.S. 1, (1985).

7 Plaintiffs are of the belief and thereon allege that the shooting of EDGAR GARCIA was
8 not Justifiable and does not meet the constitutional standards in the holding of *Tennessee v.*
9 *Garner*, 471 U.S. 1, (1985). In Garner, the Court held that deadly force was not proper unless an
10 "officer has probable cause to believe that the suspect poses a *significant* threat of death or
11 serious physical injury to the officer or others." *Emphasis added*

12 B. *Graham v. Connor*, 490 U.S. 386 (1985):

13 The standard for review of an excessive force case is an objective one pursuant to the
14 holding in *Graham v. Connor*, 490 U.S. 386 (1985) (1985). In *Graham*, Justice Rehnquist,
15 writing for the Majority, stated that "all claims that law enforcement officers have used
16 excessive force-deadly or not- in the course of an arrest, investigatory stop, or other "seizure" of
17 a free citizen should be analyzed under the Fourth Amendment and its "reasonableness"
18 standard, rather than under a "substantive due process" approach. . . .

19 The factors cited in *Graham* are as follows:

- 20 1. The severity of the crime at issue;
- 21 2. Whether the suspect poses an immediate threat to the safety of the officers or
22 others; and
- 23 3. Whether he is actively resisting arrest or attempting to evade arrest by flight; See
24 *Tennessee v. Garner*, 471 U.S., at 8-9

25
26 Here, Plaintiffs contend that Officer Ramirez was unable to state any felony that he
27 observed EDGAR GARCIA commit, that at best, Mr. GARCIA pointed the gun at him but did
28

1 not fire it. Instead, Officer RAMIREZ states, as heard on the audio recording made by Officer
2 Scott Varner as the incident actually happened, “he pointed a gun at me, I shot back.”

3 Plaintiffs further contend that EDGAR GARCIA was not actively resisting arrest at the
4 time that he was shot, but was in fact attempting to escape Officer RAMIREZ’ attempts to kill
5 him when he was in fact shot in the back by Officer RAMIREZ. Officer RAMIREZ admitted at
6 his deposition that he shot Mr. GARCIA at a time when his back was pointed towards him and as
7 he was running away. He further admits that he did not see any weapon in possession of Mr.
8 GARCIA at the time he fired the fatal shots.

9 C. *Cruz v. City of Anaheim*, No. 12-55481 (9th Cir. 2014):

10 In *Cruz*, Judge Kozinski, citing *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994) stated
11 “we cannot ‘simply accept what may be a self-serving account by the police officer’ because the
12 person most likely to rebut the officers’ version of the events—the one killed—can’t testify,
13 ‘[t]he judge must carefully examine all the evidence in the record . . . to determine whether the
14 officer’s story is internally consistent and consistent with other known facts.’”

15 In the instant matter, Plaintiffs contend that Officer RAMIREZ was not authorized to use
16 deadly force and did violate GARCIA’S 14th amendment rights because he was not justified to
17 do so because Mr. GARCIA was not posing an immediate threat to him or the public by running
18 the opposite way from the officer, who was standing behind a 6’ cinder block wall and could not
19 see any weapon in Mr. GARCIA’S hands as he ran from him and at the time he made the fatal
20 shots.

21 D. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978):

22 The CITY OF SANTA PAULA AND THE SANTA PAULA POLICE DEPARTMENT
23 Claim that the Police Department did nothing to raise any Municipal Liability under a Monell
24 Theory.

25 *Monell* authorizes Section 1983 lawsuits against Police Departments and Municipal
26 entities when their policies, customs, and practices are responsible for the Unconstitutional
27 Deprivations of Citizen’s rights.

1 E. *City of Canton v. Geraldine Harris*, 489 U.S. 378, (1989):

2 *City of Canton* is the leading U.S. Supreme Court Case regarding failure to train police
3 officers. The Court in *City of Canton* reasoned that “the inadequacy of police training may serve
4 as the basis for Section 1983 liability only where the failure to train in a relevant respect amounts
5 to deliberate indifference to the constitutional rights of persons with whom the police come into
6 contact . . . ; that a city is not liable under Section 1983 unless a municipal “policy” or “custom”
7 is the moving force behind the constitutional violation. Only where a failure to train reflects a
8 “deliberate” or “conscious” choice by the municipality can the failure be properly thought of as
9 an actionable city “policy.” In *Canton*, the court reasoned that municipalities are deliberately
10 indifferent to the inhabitant’s Constitutional rights when they don’t train their officers regarding
11 the appropriate use of force in the “obvious areas” of police work where force can be
12 foreseeable.

13 Footnote No. 10 of the *Canton* decision helps to explain the obviousness rule here in its
14 entirety:

15 For example, city policymakers know to a moral certainty
16 that their police officers will be required to arrest fleeing
17 felons. The city has armed its officers with firearms, in
18 part to allow them to accomplish this task. This, the need
19 to train officers in the constitutional limitations on the use
20 of deadly force, see *Tennessee v. Garner*, 471 U.S. 1, 105
S.Ct. 1964, 85 L.Ed.2d 1 (1985), can be said to be “so
obvious,” that failure to do so could properly be
characterized as “deliberate indifference” to constitutional
rights.

21 It could also be that the police, in exercising their
22 discretion, so often violate constitutional rights that the
23 need for further training must have been plainly obvious to
24 the city policymakers, who, nevertheless, are “deliberately
indifferent” to the need.

25 F. SANTA PAULA POLICE DEPARTMENT, General Order 8-1:

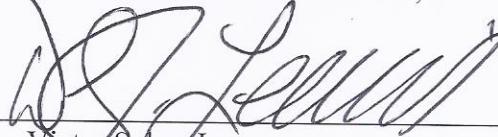
26 General Order 8-1 outlines the SANTA PAULA POLICE DEPARTMENT’S policies
27 and procedures regarding the Use of Deadly force, and when to provide medical attention to a
28 detainee/suspect who has been injured as a result of one its officer’s use of deadly force upon the

1 detainee/suspect. Defendants, allege that said policy was adhered to in this matter and that it
2 meets 14th Amendment U.S. Constitutional muster.

3 Plaintiff's contend that it does not!

4 DATED: 12-22-14

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6 By: 

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9 Attorneys for Plaintiffs HILDA
10 VAZQUEZ and the ESTATE OF
11 EDGAR GARCIA

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